

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed November 21, 2008. Claims 1, 4-8, 13, and 21-33 were pending and rejected in view of cited art.¹ Claims 1, 21, and 24 are amended. Claims 1, 4-8, 13, and 21-33 are now pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 1, 4-8, 21, 22, 24, 25, and 33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,960,410 (*Pinchuk*) in view of U.S. Publication No. 2002/0072730 (*McGill*). The Office Action rejected claims 13, 23, 26, 27, 30, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Pinchuk* and *McGill* and further in view of U.S. Patent No. 5,951,494 (*Wang*). The Office Action rejected claims 13, 23, 26, 27, 30, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Pinchuk* and *McGill* and further in view of U.S. *Wang*. The Office Action rejected claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Pinchuk* and *McGill* and further in view of *Wang* as applied to claim 27 and further in view of U.S. Publication No. 2003/0050600 (*Ressemann*). The Office Action rejected

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments and/or new claim(s) can be found throughout the specification and drawings as originally filed.

claim 31 under 35 U.S.C. § 103(a) as being unpatentable over *Pinchuk* and *McGill* as applied to claim 1 and further in view of U.S. Patent No. 6,596,217 (*Davis-Lemessy*). Applicant respectfully traverses.

Pinchuk was cited as disclosing “a balloon catheter comprising a catheter shaft having a distal end (24), an inflatable balloon . . . , a proximal end coupled to a connecting piece (30), a guiding wire lumen (22), and an inflation lumen (52). *Pinchuk* further discloses that the guiding wire lumen has coupled proximal (60) and distal (64) portions” (Office Action, page 3). It was noted that “*Pinchuk* fails to explicitly teach or disclose that a transitional portion is provided with kink protection at least partially overlapping the proximal and distal portions” (*Id.*). *McGill* was cited as teaching “a kink protection portion (205) which extends over both a proximal and distal portion. [*McGill*] They further teaches a second form [of] kink protection in the form of a metal coil (634), which the examiner believes could be placed inside or outside of the pipe” (Office Action, pages 3 and 4).

In *McGill*, “a protector tube 205 cover[s] the majority of the coil 102 when the device is contracted” (Paragraph 0129). “The protector tube 205 can . . . be bonded . . . to the proximal end to the distal hypotube 22 and optionally to the distal end of the coil 102” (*Id.*). “The function of the tube 205 is to provide an extra support to prevent the pull wire 24 from kinking upon manipulation relative to the distal hypotube 22” (*Id.*) (emphasis added). The configuration of Figs 14 and 15, illustrate the protector tube overlapping a portion of the hypotube 24 and that a portion of “[a] coil 102 is bonded to the proximal end of the distal hypotube” (Paragraph 0121). As illustrated in Fig. 14, the protector tube 205 terminates distal the proximal end of the coil to allow the coil to expand and contract during movement of the pull wire 24. Applicant has been unable to find in *McGill* any teaching that the protector tube “at least partially overlap[s] the proximal and distal portions of the pipe” for a guiding wire lumen as claimed in independent claims 1, 21, and 24. In fact, extending the protector tube from the distal hypotube to a proximal portion of the pull wire of the configuration of Fig. 14 (or, if the protector tube were included in the configuration of Fig. 10, the proximal hypotube 104) would appear to prevent the coil from expanding and contracting during movement of the pull wire 24, thereby defeating the principle of operation of the device of *McGill*.

Turning to metal coil 634, as taught in *McGill*, the coil “surrounds the intermediate portion of the wire,” however, Applicant has not found any teaching in *McGill* that it “at least

partially overlap[s] the proximal and distal portions of the pipe" (Paragraph 0178 and see Fig. 29). Rather, the metal coil 634 is proximal "the proximal end of the catheter body 612" (*Id.*).

Consequently, even if, *arguendo*, it were possible to combine the teaching of *McGill* with that of *Pinchuck*, Applicant respectfully submits that *McGill* neither teaches nor suggests "at least partially overlapping the proximal and distal portions of the pipe" with kink protection as claimed in independent claims 1, 21, and 24 and so the combination still fails to teach the invention of independent claims 1, 21, and 24. Furthermore, Applicant respectfully submits that there would be no reason to combine the teachings of *McGill* with that of *Pinchuck* because *Pinchuck* already teaches that the "composite inner member 22 . . . advantageous[ly] . . . allows the catheter to be inserted more easily along a tortious path through a subject's cardiovascular system without kinking and with improved pushability" (Col. 3, ll. 48-54). Applicant respectfully submits that there would be no reason to add additional support and kink resistance to the device of *Pinchuck* through use of the structure of *McGill* that already prevents kinking of a wire rather than a tube.

With respect to the remaining rejections under Section 103 with *Wang*, *Ressemann*, and *Davis-Lemessy* in combination with *Pinchuck* and *McGill*, Applicant have been unable to find in *Wang*, *Ressemann*, and *Davis-Lemessy* any teaching of "a transitional portion between the proximal and distal portions of the pipe is provided with kink protection at least partially overlapping the proximal and distal portion of the pipe," as recited in independent claim 1, "the catheter shaft comprising a pipe having proximal and distal portions, the proximal and distal portions of the pipe being coupled together by a sleeve that at least partially overlaps the proximal and distal portions of the pipe," as recited in claim 21, or "the transition and at least partially overlapping the proximal and distal portions of the pipe." Accordingly, dependent claims 13, 23, and 26-32 are allowable for at least the same reasons stated above.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any

Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 23rd day of March, 2009.

Respectfully submitted,

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